

## **TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE**

### **NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REAL ESTATE COMMISSIONER**

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION**

The Commissioner proposes to adopt, amend and/or repeal sections 2805, 2809.3, 2840, 2840.1, 2849.01, 3005(c),(d),and (e), 3006(d), 3007.05, 3007.2, 3007.3, and 3011.4 in Title 10 of the California Code of Regulations (CCR).

#### **PUBLIC COMMENTS**

The Commissioner or his representative will hold a public hearing starting at 10:00 AM, on December 7, 2006, at the Department of Real Estate Examination Room, located at 2200 X Street, Suite 120B, Sacramento, California. The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Commissioner.

This hearing will be a hearing under Sections 10226 and 11011 of the Business and Professions Code to determine whether license and subdivision fees lower than the statutory maximum should be prescribed.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on December 7, 2006. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel  
Department of Real Estate  
2201 Broadway  
P. O. Box 187000  
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

Comments may be sent via electronic mail to [regulations@dre.ca.gov](mailto:regulations@dre.ca.gov) or via fax to David B. Seals at (916) 227-9458.

#### **AUTHORITY AND REFERENCE**

The changes to the regulations are authorized by Business and Professions Code sections 10080, 10170.4, 10232, 10232.2, 10238, and 11281 to implement, interpret or make specific Business and Professions Code sections 10170.4, 10170.5, 10232, 10232.2, 10236.4, 10238, 10240, 10240.2, 10241, 10245, 11211.5, 11212, 11226, 11231, and 11234 and Financial Code sections 4970 and 4979.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **SUMMARY OF EXISTING LAWS AND REGULATIONS**

The Vacation Ownership and Time-share Act of 2004 (Chapter 697 of the Statutes of 2004) enacted a new statutory approach to the qualification and registration of time-share sales programs in California. The Department adopted regulations in 2005 to implement the act. The changes proposed herein in Regulation Sections 2805 and 2809.3 are intended to implement, interpret or make specific these laws and regulations.

Section 10240 and 10241 of the Business and Professions Code provide for the disclosure of specified information by real estate brokers to borrowers who are obtaining financing. Sections 2840 and 2840.1 of the Regulations were adopted to provide forms that would comply with the requirements of the statutes and would be in a format that meets the needs of borrowers, the Department, and the industry. The changes proposed herein in Regulation Sections 2840 and 2840.1 are intended to implement, interpret or make specific these laws and regulations.

Business and Professions Code Section 10232.2(c) requires reporting threshold mortgage brokers to report certain aspects of their business activities to the Department on an annual basis. Regulation 2849.01 provides the Mortgage Loan/Trust Deed Annual Report format to real estate brokers for this purpose. Section 4979 of the Financial Code requires licensees who originate covered loans to provide to the licensing agency documentation regarding these loans. The changes proposed herein in Regulation Section 2849.1 are intended to implement, interpret or make specific these laws and regulations.

In 1984 the real estate industry and the Department increased the emphasis on continuing education for real estate licensees. That was the year that Section 3005 was first adopted. In 1996 sweeping changes were made again, with many of the continuing education regulations being repealed. The changes proposed herein in Regulation Sections 3005, 3006, 3007.05, 3007.2, 3007.3 and 3011.4 are intended to revive the continuing education regulations by implementing, interpreting or making specific the regulations that currently apply to continuing education.

### **SUMMARY OF THE EFFECT OF THE PROPOSED ACTION**

#### AMENDMENT OF SECTION 2805

Changes the word “ten” to “eleven” to comply with Section 11211.5 of the Business and Professions Code.

#### AMENDMENT OF SECTION 2809.3

Adds a draft public report to items that must be submitted to the Department in an application for a nonspecific time-share interest multi-site time-share plan. This will match the requirements for a single-site time-share plan.

#### AMENDMENT OF SECTION 2840

Replaces the requirement that the form which is contained in the section is mandatory and provides that forms specified in the amended regulation may be used as well as other forms if approved by the Commissioner pursuant to Section 10241 of the Business and Professions Code.

#### REPEAL OF SECTION 2840.1

Repeals this form because it is obsolete if the amendment to Section 2840 is adopted.

#### AMENDMENT OF SECTION 2849.01

Adds a provision to require mortgage loan brokers, under Section 4979 of the Financial Code, who meet the requirements of Section 10232 and/or 10238 of the Business and Professions Code to report loans covered under Section 4970 of the Financial Code.

#### AMENDMENT OF SECTION 3005(c), (d), and (e)

Amends Section 3005(c) to expand the definition of “final examination” to include all continuing education offerings; 3005(d) to provide that a “material change” includes a change in the method of presentation of a continuing education offering; and 3005(e) to expand the definition of “completed” to include all continuing education offerings.

#### AMENDMENT OF SECTION 3006(d)

Amends Section 3006(d) to require a final examination for all continuing education offerings.

#### ADOPTION OF SECTION 3007.05

Specifies the forms of acceptable identification from students seeking admittance into either a live continuing education presentation or the final examination of a correspondence course.

#### ADOPTION OF SECTION 3007.2

Specifies that (a) any material change to an approved continuing education offering must be submitted to the Department for approval prior to use and (b) the submittal requires a new application and the associated fee.

#### **AMENDMENT OF SECTION 3007.3**

Amends the regulation to (1) apply to all continuing education offerings with the exception that examinees for correspondence continuing education offerings are limited to completion of final examinations for a maximum of twelve credit hours in any one 24 hour period; (2) define that 70% is the passing score for an examination; and (3) allow time involved in the final examination to be treated as “clock-hours” for course offerings.

#### **AMENDMENT OF SECTION 3011.4**

Amends Section 3011.4 to require that all petitions for equivalency for attendance at unapproved programs to obtain continuing education credit must include a final grade report for the final examination and a list of reading assignments with page references.

#### **EFFECT ON SMALL BUSINESS**

The proposed regulatory changes may affect small business.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

1. Plain English drafting: The Commissioner has confirmed that these regulations have been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).
2. Mandate on local agencies and school districts: None.
3. Cost or savings to any state agency: None.
4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None.
5. Other non-discretionary cost or savings imposed upon local agencies: None.
6. Cost or savings in federal funding to the state: None.
7. The Department is aware that there may be cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, such cost impact will not be significant.

8. The Commissioner has made an initial determination that the adoption, amendment or repeal of these regulations will not have a significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

10. Significant effect on housing costs: None.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

## **CONTACT PERSON**

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel  
Department of Real Estate  
2201 Broadway  
P. O. Box 187000  
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

The backup contact person is:

James L. Beaver, Assistant Chief Counsel  
Department of Real Estate  
2201 Broadway  
P. O. Box 187000  
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel  
Department of Real Estate  
2201 Broadway  
P. O. Box 187000  
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel  
Department of Real Estate  
2201 Broadway  
P. O. Box 187000  
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

#### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INTERNET SITE**

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website ([www.dre.ca.gov](http://www.dre.ca.gov)). The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have

reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

#### **COMPLIANCE WITH GOVERNMENT CODE §11346.4(A)(1) THROUGH (4)**

The Department of Real Estate (the Department) has complied with Government Code §11346.4(a)(1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed Regulations with changes indicated in strikeout and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.
4. The California Association of Realtors, a real estate licensee trade organization and the California Building Industry Association, a homebuilders trade organization.
5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

DATED: \_\_\_\_\_

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Jeff Davi  
Real Estate Commissioner